COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department Regarding the Assignment of Interstate Pipeline Capacity Pursuant to Natural Gas Unbundling, D.T.E. 98-32-B (1999).	))))))	D.T.E. 04-01

REPLY COMMENTS OF AMERADA HESS CORP.

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I. Introduction.

Amerada Hess Corporation, ("Hess"), appreciates the opportunity to offer comments in reply to the Attorney General, the LDCs, and other marketers in this proceeding. Hess incorporates herein its introduction and initial comments as filed with the Department of Telecommunications and Energy (the "Department") on March 1, 2004.

II. The Marketers Are In Concert That Problems With The Existing Slice Of System Mandatory Capacity Assignment Program Should Be Addressed Before Longer Term Issues Are Discussed.

Hess, Energy East Solutions and Select Energy, ("Select") each have identified the "Slice of System", ("slice"), method of capacity assignment as a substantial barrier to competition in Massachusetts. Hess recommends a path approach of capacity assignment whereby marketers would be allocated capacity from one path per pipeline for long-haul capacity and a second path for storage and short-haul capacity. Any difference in the cost of the capacity allocated and the system average cost for that pipeline would be charged or credited to the marketer through a surcharge by the LDC. Hess recommends looking to the New York path method as a model for Massachusetts. Hess argues that marketers would be assigned the same total cost for capacity as they are now assigned through the slice, however, the capacity they would receive from each LDC would be more useful and cost effective than the fragmented slice they currently receive.

Energy East Solutions references changing to the path approach and cites the Rhode Island path model as a potential alternative to the slice (Energy East Solutions Comments at 1). Rhode Island uses a path and surcharge model similar to that recommended by Hess. Select does not reference any particular model, but urges the Department to reconsider switching from the slice approach to a path approach and states that "…the slice-of-system basis is a fundamentally unworkable methodology" (Select Comments at 3). Each marketer identified revising the existing slice methodology as the first step toward improving competition in Massachusetts markets.

Unitil is the sole LDC to recognize the problems presented by the slice approach (Unitil Comments at 4, part 2). Perhaps as a small LDC, they can better understand the adverse financial and operational impacts of the slice. Unitil also requests the ability to modify the slice to allow it more flexibility to assign larger blocks of capacity "… at a single delivery point, resulting in capacity that could actually be of some use to marketers…" (Unitil Comments at 4). Hess' believes its proposal would satisfy Unitil's requirements. Hess commends Unitil for looking for ways to improve the current system.

All of the other LDCs recommended retaining the existing capacity assignment method and some praised the slice method as being the most equitable method of capacity allocation. The Attorney General was silent as to the assignment method.

The LDCs, other than Unitil, have not recognized the complexities and barriers the slice has presented to competition. Marketers have identified the slice as the greatest barrier in the current program. A path approach as outlined by Hess and Energy East Solutions would satisfy the goals the Department for both cost equity and reliability. Furthermore, since the LDCs would design and release the paths to marketers on an annual basis, the Department's concerns that a path approach would afford customers who switch the ability to cherry pick capacity paths would not apply. Paths would not be permanently released to marketers for their customers.

The Department in its wisdom in DTE 01-54, Competitive Market Issues For the Electric Market, and DTE 01-28 (Phase II), Investigation into Billing Services to be Provided by Electric Distribution Companies to Competitive Suppliers Serving Customers in their Service Territories, took an approach for the electric industry whereby it examined ways to improve electric competition by methodically reviewing various aspects of its rules identified as inhibiting competition. Hess recommends the Department adopt a similar approach here with the natural gas industry.

Hess further recommends the Department initiate either technical sessions or working groups in a process similar to that adopted in the electric industry to examine issues surrounding the mandatory allocation of capacity and the Model Terms and Conditions. The first task of these groups would be to reexamine the path approach as a practical substitute for the slice. Technical sessions or working groups are better vehicles than formal hearings to decide operational details of a capacity assignment program as the parties can discuss the best way to implement the details of a program without the parties having to go through the formality of a cumbersome adjudication. Hess also believes a working group or technical sessions would be a better forum than the Collaborative approach utilized prior to D.T.E. 98-32. It is important to have the structure of a technical session or working group held at the Department's offices to ensure that these issues are addressed in a timely fashion. Numerous attempts by various marketers at revitalizing the Massachusetts Gas Unbundling Collaborative to discuss making changes to the existing rules have failed in the past. We believe that vehicle has lived out its useful life.

Hess recommends the Department reconsider its position in 98-32-B regarding a slice of system approach and consider the arguments of Hess and the other marketers to move to a path approach of capacity allocation. A move to a path approach would be a win-win solution for marketers and customers and should make administration easier for the LDCs as well. We also recommend the Department initiate technical sessions or working groups as soon as practicable with the goal of implementing a workable path capacity allocation approach that achieves the goals of cost equity between participants with a November 1, 2004 implementation date.

III. Technical Sessions or Working Groups Can Be Used To Address Other Marketer Concerns With The Existing Program

Hess and Energy East Solutions both request other changes be made to the Model Terms and Conditions. Hess recommends the LDCs expand the period over which capacity is released from a one-month release to annual releases for baseload resources. Hess also requests a change to the balancing penalty provisions (Hess Comments at 7-8) and Energy East Solutions requested changes to synchronize nomination deadlines and procedures with industry standards, that LDCs provide the algorithm components used to forecast the needs of non-daily metered customers, and that LDCs correct the algorithms for summer loads to exclude weather sensitivity calculations where it does not occur. (Energy East Solutions Comments at 1-2)

A technical session or working group format could include a review of the Model Terms and Conditions to ensure they are appropriate for the conditions of the industry today where these and other operating issues could be addressed. There has been much progress made in these areas over the last several years in the industry with regard to standards. We have had three and a half years of operations under the Model Terms and Conditions and can point to numerous efficiencies in processes that can make administration of transportation programs smoother for all participants. The technical session or working group format would provide an excellent forum to accomplish such a review and would allow an opportunity to resolve many of these issues without a cumbersome litigation process.

IV. The Department Should Require the LDCs to Periodically Report Transportation Migration by Class in a Standard Format to the Department, and Post the Data on the Web.

The Department and other interested parties should have ready access to information regarding the state of the competitive natural gas market in Massachusetts. Many public utility Commissions periodically post data on the Internet regarding the number of customers and load that has switched to the competitive market to enable interested parties to check the pulse of the competitive market. Massachusetts should also make this information available. Even data provided in this proceeding by the LDCs has come in formats that cannot be consolidated to provide a statewide picture, nor can one make consistent comparisons between LDCs. For example, data is not provided by rate class, which are fairly standard for each LDC in Massachusetts, and in some cases, only the number of customers who have switched is provided and not the load. These data can tell a very different story. Data by rate class would give an indication if specific size or load factor customer types have switched. Data on the load and number of customers by class that has switched in comparison to the customers and load that has not switched can also give an indication of the average use per customer that has switched vs. the average use of customer who have not switched.

LDCs should be required to provide the number of customers, broken down by class and the service within the class – both transportation or default. Alongside the number of customers should be the last 12 months of load by class and by service within the class. This information should be provided with the LDCs' semi-annual CGA filings for posting on the DTE website.

V. Once the Existing Program Problems Are Addressed, the Department Could Address Arguments on the Disposition of Capacity.

Hess believes there is room for further discussion regarding the longer-term capacity disposition issues. The LDCs view of mandatory capacity assignment as an all-or-nothing proposition and do not consider a gradual phase-in of capacity ownership by marketers as proposed by Hess. The LDCs have looked at the market indicators identified by the Department, have concluded that the requirements have not been met and therefore believe that nothing more should be done. Hess believes just as new customers can come online without LDC capacity, some marketer capacity can be substituted for that purchased by LDCs at new contract times without financially impacting existing customers who still take service from the LDC. LDCs will still retain Supplier of Last Resort ("SOLR") responsibility, but will be partnering with marketers for resources.

Hess recommends using the same forum of technical sessions or working groups to facilitate discussions around these proposals. These technical sessions could take place once existing program issues are resolved. As Hess stated in its initial comments, unless there are provisions to move capacity into marketers' hands over the long term, the Department's criteria for determining if the upstream capacity markets are competitive will not be met. If marketers have no reason to purchase and hold their own capacity because they get all their capacity from the LDCs, then they will not show up on the pipeline shipper's list with large volumes of capacity under contract for delivery to Massachusetts. A phase-in program is the only answer.

VI. Historical Background of Market Reaction to Capacity Assignment and Model Terms and Conditions

The initial comments provided by the LDCs contained a great deal of speculation as to why marketers took actions to add or divest customers and load, and incorrectly attribute decisions to various policies and regulations. Hess believes it is important to set the record straight as only marketers can accurately explain their rationale for these decisions.

When mandatory capacity assignment and the Model Terms and Conditions were implemented in November of 2000 there was an initial burst of customers who entered the competitive market. These were customers who had been unable to switch prior to this date due to onerous metering policies in place particularly on the NStar, Berkshire and Colonial systems. These LDCs had metering requirements for all size customers prior to November 2000. The cost to a customer to install a meter to be able to take gas service from a marketer was as high as $3600 per meter at that time. Hence the non-daily metered service was developed within the Terms and Conditions to alleviate the unnecessary metering burden.

The customers who switched had load factors high enough to still be able to achieve value even with capacity assigned to them once the metering requirements were dropped. This unleashed a bubble of activity on the NStar, Berkshire and Colonial systems as has been identified by those LDCs (NStar comments at 11, Berkshire Comments at 5-6). Boston Gas already had mandatory capacity assignment and a non-daily metering program, so it did not see the same bubble of activity seen by other LDCs. Bay State had a non-daily metering program for its small customers and lower cost meters for its other customers, but Bay State also had and continues to have a load factor and class-specific CGA, which makes it easier for marketers to compete for all types of customers, not just high load factor customers. Bay State also did not have a mandatory assignment requirement in place as Boston Gas did prior to November of 2000. These are the primary reasons why Bay State's program was so successful up to that point.

Subsequent to the issuance of the Department's Order in D.T.E. 98-32-B, marketers divested themselves of customers who were unprofitable because there was no possibility of gaining the scale required to serve that class of customer with the economics of a slice approach capacity assignment. This divestiture occurred over a period of about two years from the issuance of the Department's order in D.T.E 98-32-B as customers' contracts expired. Bay State saw a larger decline in the small customer category because they had more who had already switched. The demise of Bay State's residential program was a topic of considerable discussion in D.T.E. 01-81 (See *All*Energy Brief at 5-6) and was unrelated to the implementation of any regulations. Any conclusions by Bay State regarding capacity assignment impacts on the market drawn from the failure of the residential pilot program must be disregarded.

The market that remains in Massachusetts consists of grandfathered customers, customers who never took utility merchant service for new facilities and medium to large sized customers with higher than average load factors. This is consistent with the type of program in place in Massachusetts and with what marketers predicted when the regulations were implemented. Further reverse migration is unlikely unless regulations are made more onerous. Marketers who exit the business typically are able to sell contracts for these customers to other marketers.

Hess believes the Department made the correct decision in DTE 02-75 Bay State Gas Company and LDCs do not need to retain additional capacity to accommodate further reverse migration of grandfathered customers. For these reasons, Hess also does not believe that the contingency reserve recommended by the Attorney General for any further reverse migration is necessary or cost effective for customers.

VII. Conclusion

Hess once again would like to express its appreciation to the Department for soliciting comments regarding the capacity assignment and transportation programs. Our conclusions are consistent with those in our initial comments and we propose the Department initiate technical sessions or working groups for the purpose of resolving problems and barriers surrounding capacity release in the current program. We also propose to use this same forum to make some modifications to the Model Terms and Conditions identified by marketers from our last 3½ years' of operating experience with them. The Department should require LDCs to provide data on an ongoing basis to follow the progress of the competitive market and finally, we recommend post review of the current program, that the parties initiate discussions in a technical session or working group forum regarding marketers being able to substitute their own capacity for that assigned by the LDC at the time the LDC contracts for new capacity or contracts to renew its existing capacity.